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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Application of Open Network)
Architecture and Nondiscrimination)
Safeguards to GTE Corporation)

CC Docket
No. 92-256

COMMENTS OF
THE ASSOCIATION OF TELEMESSAGING SERVICES
INTERNATIONAL, INC.

Joseph N. Laseau
Denise Nebb
ATSI
1150 S. Washington St.
Suite 150
Alexandria, VA 22314
(703) 684-0016

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THE ASSOCIATION OF TELEMESSAGING SERVICES
INTERNATIONAL, INC.

The Association of Telemessaging Services, International, Inc (ATSI) respectfully submits its comments in the above-captioned proceeding.¹ The Commission has sought comment on whether to apply to GTE Corporation (GTE) the same regulatory framework of Open Network Architecture (ONA) that applies to the Regional Bell Operating Companies (RBOCs) for GTE's participation in the enhanced services market. While ATSI and its members believe that ONA is seriously deficient and does not yet create the intended "level playing field", it is prepared to support the Commission's proposal to extend the requirements to GTE as establishing at least minimal protections for competition in the industry.

¹ FCC 92-495 (released December 2, 1992).

I. STATEMENT OF INTEREST

A. Description of ATSI

ATSI is the national trade association for the telephone messaging industry. Its members provide a wide array of services, including live operator-handled message services, automated voice storage and retrieval services, and services that integrate operators and automated functions. There are approximately 4,200 telephone message service bureaus in the United States, serving some 1.2 million business and residential customers. The independent telephone message service industry employs approximately 37,000 people and generates \$712,000,000 in annual revenue.

B. ATSI's Participation in the ONA Proceedings

Because ATSI's members are and will remain utterly dependent upon the RBOCs for essential services, facilities, and interconnection, the Association has been an active participant in the Computer III, ONA proceedings, and the investigation of Bell South's offering of MemoryCall.²

2 In addition to its filings before the Commission, ATSI has taken a leading role in industry ONA efforts. For example, ATSI officials have served as active members of the IILC, and ATSI has identified its members' technical needs.

From the beginning of Computer III, ATSI has expressed serious doubts that non-structural safeguards could effectively control the "incentive and ability for the RBOCs to manipulate access in a manner that unfairly advantages the corporate goals of the competitive operations." ³

Despite these grave concerns, ATSI has stated that "its members were ready, willing, and able to compete against the RBOCs as long as the Commission developed 'sound regulatory ground rules that permit and require full and fair competition.'" ⁴ To this end, ATSI strongly endorses the concept of an Open Network Architecture (ONA), as originally advanced by the Commission and the Department of Justice, explaining that "competition simply cannot survive in the long-run unless enhanced service providers (such as TAS bureaus) are first assured of equivalent access to the public switched network." ⁵

In addition, ATSI has urged the Commission to take other critical measures to protect competition, including restricting joint marketing and billing, developing stringent

³ Consolidated Opposition of ATAE, CC Docket No. 85-229, Phase I, filed September 3, 1986, at 2.

⁴ Id.

⁵ Reply comments of ATAE, CC Docket No. 85-229, filed January 21, 1986, at 16.

cost allocation rules, and establishing fair and equitable rules for the use of customer proprietary network information (CPNI).⁶ ATSI has also filed a Petition for Reconsideration of the Computer III Remand Proceedings⁷ which "perpetuates the inadequate Computer III policies with only minor changes. In continuing to permit joint marketing and preferential access to CPNI, it clings to speculative and erroneous economic predictions that simply ignore marketplace realities....the Remand Order is arbitrary, capricious, and incompatible with competitive the voice messaging marketplace."⁸

II. ONA SAFEGUARDS ARE CURRENTLY INADEQUATE

A. CPNI RULES

As the Commission is aware, Customer Proprietary Network Information (CPNI) is the data on basic, monopoly telephone service subscribers which is accumulated by the telephone company. Current FCC rules allow the telephone companies' voice messaging service marketers access to CPNI unless the

⁶ Id. at 18-32.

⁷ Computer III Remand Proceedings: Bell Operating Company Safeguards; and Tier 1 Local Exchange Company Safeguard, CC Docket No. 90-623 (released Dec. 20, 1991) (Report and Order) hereinafter "Remand Order").

⁸ Comments of Association of Telemessaging Services International, Inc., filed March 6, 1992, at p. 2.

customer specifically requests that such access be denied. The telephone companies are obligated to inform only its large business users (20 business telephone lines or more) that CPNI may be used by telco marketers and that subscribers have the right to restrict such access. Competing enhanced service providers, on the other hand, have no access to CPNI unless the Enhanced Service Provider (ESP), through a very arduous process, gets each individual specifically releases it to them. Also, not only does the ESP have to go to a different sales group for service, but so does the customer.

The blatantly discriminatory nature of these rules are wholly inconsistent with the concept of a "level playing field" for all competitors. Moreover, access to CPNI enables the Bell Operating Companies to:

Immediately identify new potential customers, such as subscribers moving into the area or establishing new locations, prior to competing messaging bureaus even become aware of them;

Prepare highly effective marketing presentations based on information about customers' usage of bottleneck network services (such as number of missed or blocked calls) while such information is unavailable to competing messaging bureaus;

Readily identify the appropriate customer contact, while competing vendors often experience substantial delay in finding the appropriate contact;

Assess a subscribers' credit worthiness by referring to his or her telephone bill payment record, while competing vendors have to pay credit bureaus to verify a new customer's credit history.

B. JOINT MARKETING ABUSES

Telephone companies' ability to joint market competitive and monopoly services, under the terms of FCC Computer III rules, confers an enormous and unwarranted competitive advantage to the telephone companies. FCC rules permit the joint marketing of monopoly, regulated services and competitive offerings by all telephone company personnel.

For example, the same telephone company sales person who takes a new business or residence's order to start basic phone service may also attempt to sell telephone company provided voice mail services. (The telephone company sales personnel are under no obligation to inform the caller that such services are available from a variety of sources, not just the phone company.) Consequently, before competing voice messaging service providers could possibly learn of a new phone subscriber's existence, that party will either have subscribed to the telephone company's voice messaging service or already have considered and rejected use of such service.

Furthermore, when a voice messaging service provider is able to close a sale, his new customer must order necessary interconnection services from the telephone company . . . giving the telephone company an opportunity to counter-sell their own competitive service offering. This contact is known as "unhooking" - an FCC term for stealing a customer. While FCC rules prohibit unhooking, the rule only applies if the telco representative knows of the prospect's affiliation with

a competitor. In most cases, the telco representative does not inquire about such relationships. And the repair and installation employees, whose salary is paid directly by the ratepayers, are also trained to sell voice mail services, who certainly don't inquire.

Precisely this kind of behavior is occurring in the messaging marketplace today.

C. CROSS-SUBSIDIZATION TENDENCY

Accounting safeguards are intended to prevent cross subsidies between a telephone companies' regulated and unregulated activities. Bookkeeping solutions, however, have never proved effective in the past, even in the simplest environment in which monopoly and competitive services were kept separate. Moreover, the General Accounting Office has determined that the FCC is capable of performing an audit of phone company practices only once every sixteen years. This is a serious concern since even a very modest misallocation of costs would result in enormous dollar amounts being charged to basic telephone subscribers which should be attributed to competitive services. For example, in the voice messaging market, Dr. Peter Huber estimates "that a misallocation of as little as one percent would result in \$3.5 million in RBOC messaging services costs being added to basic service customers." ⁹

⁹ Huber, The Geodesic Network: 1987 Report on Competition in the Telephone Industry, at Section 10 (1987) ("Huber Report").

In May of 1991, the Georgia Public Service Commission (PSC) found recorded evidence suggesting that Southern Bell's voice messaging service (MemoryCall) "cannot be offered at the price charged by SBT and cover the true cost to SBT of even just the phone lines, trunk lines and equipment necessary to technically provide Memorycall. ¹⁰

Another advantage afforded the RBOCs due to their position as a monopoly provider of service, is noted in their billing and collection practices. Residential users typically have relatively small monthly bills for their limited or infrequent use of information services. A key aid in better reaching the enhanced services market is the ability to bill and collect information service charges as part of the customer's regular telephone bill (just as long distance companies currently include their charges on the customer's local telephone bill.) RBOCs frequently mask the cost of their voice messaging services in the design of the bill for basic services. Often, the two services are not clearly defined or separated out, leaving the customer to believe that if the bill is not paid in full (voice messaging costs included) then his telephone service could be disconnected.

10 In the matter of the Commission's Investigation Into Southern Bell Telephone & Telegraph Co. Provision of Memory Call Service., Order of the Commission, GA Docket No. 4000-U (June 4, 1991)

Unfortunately, the telephone companies have consistently prohibited its competitors from using this billing technique. The Commission has declined to exercise its authority to compel such support.

D. DISCRIMINATORY ACCESS TO NETWORK FEATURES

RBOCs frequently use their monopoly position to deter competition by specifying where and when network capabilities and features will be deployed. Not so coincidentally, the deployment of these features often accompany the introduction of the RBOC's own voice messaging services in a particular area. The Georgia PSC ruling found that BellSouth "has both the opportunity and incentive to use its monopoly control of the local network to defeat competition in the VMS market through its influence on whether, how and when competitors can access the local network. Further, the evidence shows that SBT has not hesitated to take advantage of this opportunity.... and will continue to do so if left unchecked by the Commission.¹¹ They also continue to make changes to their network that advantage their own voice messaging offerings to the detriment of ESP.

11 - Id.

III. ATSI's SUPPORT OF THE COMMISSION'S PROPOSAL

A. GTE's Ability to Discriminate

ATSI agrees with the Commission's assertion that because of its position as one of the largest local exchange carriers, GTE should be included in the same ONA requirements that govern the seven RBOCs, despite their shortcomings. However, regardless of its new size and scope, GTE has not been inculpable in the use of its own monopoly power. ATSI has collected a number of cited incidences in which GTE used its power as a monopoly provider of basic service and a competitor in the voice messaging marketplace to its advantage. For example:

1) On February 20, 1992, Voice-Tel of Northwest, an ATSI voice messaging member, filed a complaint with the FCC citing the following "unreasonable practices by GTE Northwest, Inc...
- unfair bundling of GTE CentraNet features with basic ----- services necessary for competitors to provide voice messaging service; unfair competitive practices in selling its CentraNet voice messaging services; unreasonable discrimination in failing to make available to competing voice messaging providers all basic services that GTE makes available to its CentraNet voice messaging customers; GTE's lack of COG groups to protect vendors from unfair practices by GTE sales order

writers; apparent cross-subsidization by GTE of its CentraNet voice messaging services; and the lack of an agency agreement for vendors to sell GTE CentraNet services."

The complaint further concluded that "GTE is operating with none of the FCC regulatory restrictions placed on the regional Bell Operating Companies pursuant to the Computer III decision, yet enjoys the same monopoly control over network access in the markets it services. Voice-Tel's experience with GTE tariffs and business practices suggests that GTE is using its monopoly powers to restrict competition in the voice messaging service industry."

2) Eugene Constant of Ansavoice Communication Services, Monterey, CA, submitted a complaint to the Public Utilities Commission concerning an incident in which a customer was "unhooked" while ordering the connection features needed to use his service. "No longer can I even attempt to sell my services in the CONTEL market when the service I'm selling is in need of a CONTEL network feature that only they can provide. I would just be continually giving business to CONTEL as they would intercept the sale and switch them to their services...They would control the network, control competition."

3) Jim Rosner of C&J Communications, Honolulu, HI, complains of a lack of timely public disclosure of new network

functionalities which could be utilized by his business. Furthermore, GTE has no notification policies regarding discontinuance or change to a network functionality. Rosner has also been harmed by the lack of required compliance on the part of GTE regarding the few CPNI regulations that already apply to RBOCs.

B. ONA and Non-discrimination Requirements Should Not be Relaxed for GTE

ATSI agrees with the Commission that the ONA and non-discrimination requirements should not be relaxed or modified for GTE in any way. Since ATSI asserts that existing rules already are minimally effective, if at all, these rules should be prevented from being even further weakened.

There is no basis for limiting the ONA requirements to GTE's larger exchanges. Since GTE has been determined to be equal to the RBOC in size and scope, the opportunity to discriminate exists in both large and small areas. Most ONA related costs are company-wide; requiring all GTE exchanges to comply with ONA should impose little additional burden.

GTE's and the Commission's assessment that its territories are dispersed and low density is now illogical. One example is the GTE presence in Hawaii. GTE alleges that ONA type services in this area is in less demand and therefore more costly to provide. GTE estimates that it will cost \$20 million in implementation costs the first year to provide ONA.

This equates to approximately \$1.33 per access line. However, it attributes 30% (\$6 million) to implementation in Hawaii alone (which represents only 3.8% of all GTE access lines). Per access line, that makes the cost of Hawaii approximately \$10.63. Hawaii ranks 13th in the nation with respect to density (88.1 access lines per square mile) and is the third most dense of all states (behind Florida and California). Hence, density must have little to do with cost.

US West has been required, like all other RBOCs, to follow Computer III requirements without exception. Company wide US West's density is approximately 26 lines per square mile while (again company wide) GTE's line density is 34.

If and when the Commission should declare ONA and non-discrimination requirements are to be strengthened in the future, these new requirements should automatically apply to GTE without the need for a separate proceeding. The Commission's own record states "the Commission and the industry have gained substantial experience with the BOCs' implementation of ONA and nondiscrimination safeguards. This experience, will reduce the costs incurred by GTE, the industry, and the Commission." ¹² By including, and keeping, GTE under the ONA requirements imposed upon the RBOCs, the Commission would implement a large cost saving device by imposing all future rulings on GTE as well.

Since ATSI represents the majority of Enhanced Services

Providers (ESPs) in existence today, they are uniquely
situated to observe the real life experiences of this market's

12 Application of Open Network Architecture and
Nondiscrimination Safeguards to GTE Corp., CC Docket No. 92-
256, released December 2, 1992.

competition with the telcos as opposed, perhaps, to the Information Services (IS) market. The differences between an ESP and an IS may be the source of the commission's safeguards being so ineffective for our industry. Nonetheless, the lack of even those safeguards has given GTE virtual carte blanche power in leveraging its position as a monopoly provider of essential network services in competing with our industry. In fact, one could argue every telephone company, regardless of size, has these same advantages and should come under the commission's rules. However, there is no basis whatsoever for excluding GTE.